UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ELMER KEITH TAYLOR, Defendant.	No. CR02-3042-MWB **REPORT AND RECOMMENDATION ON MOTION TO SUPPRESS**

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I. INTRODUCTION

The defendant Elmer Keith Taylor ("Taylor") has been charged in a six-count Indictment with a Hobbs Act charge, various firearms offenses, and two Dyer Act charges. (*See* Doc. No. 2) On April 11, 2003, Taylor filed a motion to suppress evidence and a supporting brief (Doc. Nos. 36 & 37). In the motion and brief, Taylor asks the court to suppress all statements he made to law enforcement on the evening of his arrest, all statements he made during plea negotiations, and all evidence related to any of those statements, including facts to which Taylor agreed in a plea agreement he signed on December 19, 2002 (Def's Ex. A). He also moves to suppress all evidence flowing from the stop of a vehicle in which he was a passenger on September 17, 2002, arguing officers lacked sufficient justification to stop the vehicle. (*See* Doc. Nos. 36 & 37) After receiving extensions of time from the court, the plaintiff (the "Government") filed a brief resisting the motion on May 2, 2003 (Doc. No. 46). Pursuant to the trial scheduling order entered October 31, 2002 (Doc. No. 8), motions to suppress in this case were assigned to the undersigned United States Magistrate Judge for the filing of a report and recommended disposition.

A hearing on Taylor's motion was continued several times while defense counsel awaited approval of funds to have Taylor examined by a psychologist to support a claim that he was not competent to waive certain of his rights, a central issue raised in the motion to suppress.[1] The court began a hearing on Taylor's motion on July 23, 2003, before

[1]Taylor previously had undergone a forensic mental examination in this case, but that evaluation was solely for the purpose of determining his competence to stand trial. In his motion to suppress, Taylor alleges he "suffered a significant trauma during his stop and eventual arrest" that, together with certain (continued…)

Taylor's psychological evaluation was completed. Assistant U.S. Attorney Peter Deegan, Jr. appeared on behalf of the Government. Taylor appeared in person with his attorney, Bill Bracker. The Government offered the testimony of Sue Eilertson, a former Worth County dispatcher and jailer; Worth County Deputy Sheriff James Christopher Boyden; Sean Lips, a detective with the Milwaukee, Wisconsin, Police Department; and Worth County Deputy Sheriff Dan Albert Fank. The following exhibits were admitted into evidence: **Gov't Ex. 1**, an audiotape of a "911" call and dispatch communications from the Worth County Sheriff's office on September 17, 2002; **Gov't Ex. 2**, the original Dispatch Log dated 09/17/02; **Gov't Ex. 3**, a corrected Dispatch Log dated 09/17/02; **Gov't Ex. 4**, a search warrant application (unsigned), search warrant, and return, for the search of a Chevrolet Blazer, VIN 1GNCS18W1K102745; **Gov't Ex. 6**, a report from an interview of Taylor by Wisconsin law enforcement officers; **Gov't Ex. 9**, a photograph of the rear of the Chevrolet Blazer described above; and **Gov't Ex. 10**, a photograph of the Chevrolet Blazer where it came to rest at the scene of Taylor's arrest.

The hearing resumed on September 17, 2003. Mr. Deegan again appeared on behalf of the Government, and Taylor and his attorney, Mr. Bracker, were present. The Government offered the testimony of David Mrad, Ph.D.; Jesse Earl Luther, a Worth County jailer and part-time dispatcher; and Agent James Allen Wertz of the Iowa Division of Narcotics Enforcement. Assistant Federal Defender Priscilla Forsyth was called to the stand but did not testify. Taylor offered the testimony of Dan Loren Rogers, Ph.D.[2] The

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[1](…continued)
organic and psychiatric impairments from which he allegedly suffers, caused him to have a mental breakdown that continues to affect him. (*See* Doc. No. 38) As a result, Taylor alleges his post-arrest statements to law enforcement were made under duress, and he claims he was mentally impaired when his statements were made and when he executed a plea agreement in this case. (*Id.*; Doc. No. 36)

[2]The testimony of Dr. Rogers was offered both in support of the motion to suppress and also in (continued…)

following exhibits were admitted into evidence: **Gov't Ex. 5**, a signed waiver of rights form; **Gov't Ex. 7**, Worth County Jail Inmate Handbook; **Gov't Ex. 8**, a notice from the Worth County Jail regarding reimbursement for room and board; **Gov't Ex. 11**, Dr. Mrad's *curriculum vitae*; **Gov't Ex. 12**, Dr. Mrad's report; **Gov't Ex. 13**, a news article critical of the American Academy of Forensic Examiners; **Gov't Ex. 14**, an audio recording of telephone calls between Taylor and his mother; **Gov't Ex. 15**, a signed copy of the search warrant application (Gov't Ex. 4); **Def's Ex. B**, an unsigned waiver of rights form; **Def's Ex. C**, Dr. Rogers's report; **Def's Ex. D**, medical records from the Worth County Sheriff's office; **Def's Ex. E**, Taylor's medical records from the Fort Dodge Correctional Facility; and **Def's Ex. F**, a booking sheet and inventory form.

The hearing was concluded on October 7, 2003. Mr. Deegan again appeared on behalf of the Government, and Taylor and his attorney, Mr. Bracker, were present. The Government offered the testimony of Assistant Federal Defender Priscilla Forsyth, and brief rebuttal testimony from Agent Wertz. The defendant, Elmer Taylor, testified in his own behalf. The following exhibits were admitted into evidence: **Def's Ex. A**, a copy of a plea agreement dated November 25, 2002, and signed by Taylor on December 19, 2002; and **Def's Ex. G**, a statement of what the parties stipulated would have been the testimony of Margie Butler, a jailer at the Worth County Jail, had she been called to testify at the hearing.

The Government filed a supplemental brief on October 15, 2003 (Doc. No. 87). Taylor filed a supplemental brief on October 16, 2003 (Doc. No. 89). In his supplemental brief, Taylor clarified that in his suppression motion he is pursuing the following claims:

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[2](…continued)
support of an oral motion by the defense to have Taylor declared incompetent to participate in his own defense. On September 18, 2003, the court entered an order holding Taylor was competent both to participate in his own defense and to stand trial. (Doc. No. 78)

1. The court should suppress the written plea agreement and any statements Taylor may have made in association with the execution of the plea agreement or during plea negotiations.

2. The court should suppress all evidence flowing from the stop of the vehicle in which Taylor was a passenger because of lack of probable cause to support the stop.

3. The court should suppress all evidence recovered during execution of the search warrant on the vehicle in which Taylor was a passenger because the warrant was not in the possession of the officers when it was executed, and, in fact, the search warrant was not even signed until after it was executed.

4. The court should suppress statements made by Taylor on the evening of his arrest.

In an order entered October 14, 2003 (Doc. No. 86), the court directed the parties to supplement the record on the third issue listed above. In particular, the parties were directed to submit to the court by October 20, 2003, any relevant evidence reflecting the date on which the search warrant was executed. On October 16, 2003, Taylor filed a response to the court's order stating he has no relevant evidence on this issue. (Doc. No. 88) On October 17, 2003, the Government filed a response to the court's order attaching a verification by the Worth County Magistrate and Deputy Fank that they both signed the search warrant papers on September 17, 2002. (Doc. No. 91)[3]

The motion has now been fully submitted, and the court turns to consideration of Taylor's motion.

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[3]On the same date, the Government filed a notice of intent to seek an enhanced penalty of "Mandatory Life Imprisonment" for Count 1 of the Indictment pursuant to 18 U.S.C. § 3559(c). (Doc. No. 90)

II. WITNESSES' TESTIMONY

The witnesses testified as follows:

A. Sue Eilertson

On September 17, 2002, Eilertson was employed by the Worth County, Iowa, Sheriff's Department as a dispatcher and jailer. At 4:00 p.m., as her shift was ending, she received a "911" call from a clerk at a convenience store in Hanlontown, Iowa. The clerk reported he had just been robbed at gunpoint. He described the robber as a tall black male, 45 to 50 years old, wearing glasses, and armed with a "big gun." He stated the robber had left the scene in a newer-style, tan, two-door Chevrolet Blazer with out-of-state license plates, and had headed north on Interstate 35. Eilertson relayed this information to the regional Iowa State Patrol communications center, which in turn notified Minnesota authorities.[4] Deputy Boyden, who was at the Worth County Sheriff's office when the "911" call came in, immediately was dispatched to deal with the situation.

At 4:10 p.m., Eilertson reinitiated contact with the convenience store clerk to obtain additional information. The clerk advised Eilertson that the robber was wearing a black striped shirt and black dress pants, was about 6'2" tall, and weighed about 200 pounds. The clerk also stated there was a female wearing a white T-shirt in the get-away vehicle. Eilertson relayed this information to the Iowa State Patrol.

At 4:14 p.m., Eilertson received a radio call from Deputy Boyden, who indicated he was following a tan vehicle heading west from the Iowa Welcome Center on Highway 105. The Welcome Center is located at the intersection of Interstate 35 and Highway 105, at the first exit off of the Interstate south of Minnesota, about four miles from the Minnesota state line. Deputy Boyden advised the vehicle bore a Minnesota license plate,

[4]The northern border of Worth County is the Minnesota state line.

number "760 GLR."[5] Eilertson typed the plate number into a computer and learned the plate was for a 1992 Nissan four-door vehicle that was registered to someone in Mankato, Minnesota. At 4:15 p.m., before Eilertson relayed this information to anyone, she heard Deputy Boyden on the radio stating in a loud voice, "Get me backup," and then, "Driver, get out of the car, hands on the hood." Deputy Boyden yelled, "Shots fired!" Then, Eilertson lost radio contact with Deputy Boyden for a few minutes. At 4:20 p.m., she heard the Iowa State Patrol communications center broadcast over the radio that two suspects were in custody on Highway 105, four miles west of the Welcome Center.

B. James Christopher Boyden

Deputy Boyden is an experienced law enforcement officer, with 13 years' service as a Worth County deputy sheriff. At 4:00 p.m. on September 17, 2002, he was working at the Sheriff's office when the "911" call came in. He immediately went to his patrol car, and drove seven miles west on Highway 105 to Interstate 35, where he set up observation on the northbound entrance ramp on to Interstate 35.[6] The Highway 105 exit off of Interstate 35 is about 11 miles north of the convenience store where the robbery took place.[7] A state trooper was driving north on Interstate 35 from south of the convenience store, and radioed that he would watch for the suspect vehicle. When the trooper passed Deputy Boyden's location at the Highway 105 exit, he advised he had not seen the vehicle,

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[5]Officers later determined the plate actually was an Arizona plate.

[6]He testified he traveled to Interstate 35 at between 80 and 90 miles per hour, and would have reached the Interstate before the robber could have passed the exit.

[7]Deputy Boyden first testified the Highway 105 exit was 12 miles north of the convenience store, and later stated it was 8 to 10 miles. Examination of a map of the area indicates the exit was 11 miles north of the store.

and because Deputy Boyden had not seen the vehicle, he concluded the robber was no longer traveling north on Interstate 35.

Deputy Boyden decided to check out the Iowa Welcome Center immediately west of the Interstate on Highway 105, so he drove onto the Interstate, crossed over to the southbound lanes, and took the westbound exit onto Highway 105. When he came to the Welcome Center, he observed a "tannish" two-door Chevrolet Blazer stopped at an intersection, coming from the north. The Blazer was being driven by a blonde white female wearing a white shirt.[8] According to Deputy Boyden, the woman looked at him through her open driver's-side-door window with a "deer-in-the-headlights" look. She then turned right without using a turn signal, and proceeded west on Highway 105. The Blazer was traveling at 40 to 50 miles per hour, which is within the speed limit for that location.

The deputy decided he would stop the Blazer, so he followed the vehicle to make the stop. He based this decision on the following facts: the vehicle generally fit the description of the get-away car; a witness said the get-away car had headed north on Interstate 35, and the deputy had not seen any other vehicles fitting the description of the get-away car heading north on Interstate 35; a woman in a white T-shirt was driving the Blazer, and a witness had seen a woman in a white T-shirt sitting in the get-away car during the robbery; and the deputy was suspicious of the look on the face of the woman driving the Blazer.

[8]Deputy Boyden testified he had been advised that the second occupant of the get-away vehicle was a blonde white female wearing a white shirt. The record indicates he only was told the second occupant of the vehicle was a woman wearing a white T-shirt.

Deputy Boyden followed the Blazer and called in the license plate number to the dispatcher.[9] He then activated his red emergency lights. The vehicle slowed briefly and then sped up again, so Deputy Boyden activated his siren. After traveling another quarter of a mile, the vehicle pulled over to the right side of the road. The deputy got out of his car and yelled for the driver of the Blazer to get out of the vehicle. By this time, the driver's-side-door window of the Blazer was closed. At first, no one responded to his order. Deputy Boyden radioed the dispatcher for backup, and then began walking toward the left front of the car with his hand on his gun.[10] As he reached the midpoint of the Blazer, the driver's-side door began to open, and the female driver started to get out of the vehicle. The deputy then saw the head of a black male "pop up" in the back seat, and then disappear again.

The deputy immediately drew his gun. He ordered the female to go to the rear of her vehicle and get down on the ground. As the female started to comply with this request, the deputy moved into the ditch on the south side of the road, and ordered the male in the back seat to get out of the vehicle. The male complied, getting out of the vehicle through the driver's-side door. The male was wearing black pants and shoes, but no shirt. The deputy ordered him to get on the ground. In response, the male turned and said something to the female, and then said, "I'm not getting down on the fuckin' ground." The male then ran to the driver's door of the Blazer, got in, and reached under the front seat. At the same time, the female got off the ground and got in the vehicle through the passenger's-side door. Because the robbery had been accomplished with a gun, the deputy thought the male might be reaching for a weapon underneath the front seat. The male then

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[9]The name of the state issuing the license plate was obscured by a license plate cover and two trailer hitches. Although he had the correct plate number, the deputy misidentified the issuing state as Minnesota, when it was, in fact, an Arizona plate. (*See* Gov. Ex. 9)

[10]The gun was in a holster, but the holster was unsnapped.

started to drive the Blazer away, and the deputy began shooting at the vehicle's left front tire. The deputy took seven shots, with two striking the tire, three striking the driver's side door (but not entering the passenger compartment of the vehicle), and two not hitting anything.

Deputy Boyden returned to his car and gave chase. After a few miles, he saw smoke coming out from beneath the vehicle, and then the vehicle swerved off the road on a curve and came to a stop on the shoulder. The female got out of the vehicle and ran back toward the deputy's car. The male ran into a bean field and squatted down. The deputy told the female to get on the ground, and he repeatedly told the male to come out of the field and get on the ground. Chief Dorsey from the Northwood, Iowa, Police Department arrived at the scene, and repeated the instructions to the man to come out of the bean field and get on the ground. The man then came out of the field, returned to the road as ordered, and got on the ground. Deputy Boyden went over to secure the female while Chief Dorsey secured the male, who was identified as Taylor.

C. Elmer Keith Taylor

Taylor testified in his own behalf at the suppression hearing. The court notes that Taylor was coherent, lucid, and properly responsive to all of the questions he was asked. He appeared to be intelligent, and in full control of his thoughts and emotions.

Taylor testified that when he and his female companion, Anna, left the gas station near the Welcome Center, he was laying down in the back seat of the vehicle. When Anna told Taylor the police were behind them, Taylor responded that she should just show them her driver's license. Anna made two turns, and when the police siren was turned on, she stopped the vehicle. She started to "freak out," so Taylor again told her just to show the police her driver's license.

A police officer ordered Anna to get out of the vehicle, and she complied. When the officer came up to the vehicle, he saw Taylor and drew his gun. He ordered Anna to go to the front of the vehicle, and ordered Taylor out of the vehicle. Taylor testified he got out of the vehicle with his hands up, but the officer swore, yelled, and waived his gun around "crazy like, kind of scary like." The officer ordered Taylor to the ground, but Taylor thought the "erratic middle-aged hick guy with his gun" was "totally freaking out" and might hurt them, so Taylor got in the vehicle with Anna and drove away. As he drove away, he heard shots being fired at the vehicle, and he thought the officer was trying to kill him. After driving about three or four miles, Taylor stopped the vehicle, got out, and ran into a bean field. He then returned to the highway and laid down on the ground.

Another officer transported Taylor to the jail. Taylor testified that when the officer and Taylor arrived at the jail, the officer told Taylor that the first officer should have killed him. Taylor stated he was cold and dirty and needed to use the restroom, but the officer made him sit in the police car for an hour to an hour-and-a-half before he was taken inside the jail. According to Taylor, as he was taken from the police car into the jail, the officers used racial epithets. Taylor testified that once he was in the jail, he repeatedly told the officers he was sick, and he asked several times to use the telephone, but no one would let him. He also told the officers he was cold, but they refused to give him a blanket. Eventually, he was given a jail jumpsuit.

Taylor testified he did not remember asking to talk with the officers, but he remembered talking with Special Agent Wertz. According to Taylor, he asked Agent Wertz if he could make a telephone call, but Agent Wertz stated he wanted to talk with Taylor first. Taylor had the impression that if he spoke with Agent Wertz, he might be given some food and be allowed to make a telephone call. Agent Wertz did not swear or

use racial epithets, so Taylor felt safer with Agent Wertz. Taylor testified he felt Agent Wertz was being nice to him as a "manipulation tactic."

Taylor testified that when he was brought to federal court, he met his attorney, Assistant Federal Defender Priscilla Forsyth. He received a proposed plea agreement from her in the mail and tried to read it, but he only reads at a third or fourth grade level and did not understand a lot of it. Before he signed the plea agreement, he discussed the proposed agreement with her on the telephone a couple of times, and met with her about it at least once. He testified Forsyth told him the prosecutor wanted him to sign it, and he did so only after telling her not to "turn it in" because he did not agree with parts of it. In particular, he had concerns about the waiver of appeal rights in the agreement, and he thought some of the dates listed for his prior convictions were wrong. He testified Forsyth told him to sign the plea agreement even if he did not understand it, and they would talk about it when he got back from Springfield.[11]

Taylor testified he was upset with Forsyth because she had taken his "speedy trial off" without discussing it with him and without his permission. She explained she had done so because the Government was going to file a "three-strikes" motion, and she was trying to avoid that.

On cross-examination, the prosecutor reviewed the plea agreement with Taylor, and Taylor demonstrated at least some understanding of most of the important provisions of the agreement.

[11]This testimony is directly contradicted by the fact that when Taylor signed the plea agreement, no motion had been filed for a psychiatric examination, and there was nothing to indicate he would be sent to Springfield or any other Federal Medical Center.

D. Jesse Earl Luther

Luther is a jailer and part-time dispatcher with the Worth County Sheriff's office. At about 3:45 p.m. on September 17, 2002, Luther began Taylor's booking process at the Worth County Jail. He inventoried Taylor's personal property, which consisted only of a Wisconsin driver's license bearing Taylor's name and photograph. He stated Taylor was wearing black dress pants, a belt, and black shoes, but no shirt. Luther testified that while completing the booking forms, he read Taylor his *Miranda* rights off of a form (Def's Ex. B). Luther told another officer that he needed Taylor to sign the waiver-of-rights form, but Chief Book said Taylor would not be signing anything until he was taken to a cell (Taylor's hands were cuffed behind his back). Taylor later was taken to a secure room in the jail where his handcuffs were removed. Luther provide Taylor with an orange jumpsuit, which Taylor put on. Luther then read the waiver-of-rights form to Taylor a second time, and explained two other documents to him -- an Inmate Handbook, and a room and board reimbursement form. He asked Taylor to sign the documents, and Taylor stated he knew his rights, but he would not sign anything. Luther wrote "refused to sign" at the bottom of each of the three documents.

E. Margie Butler (stipulated proffer - Def's Ex. G)

Butler was employed as a jailer at the Worth County Jail on September 17, 2002. On that date, she arrived for work at the jail at approximately 5:30 p.m. She recalled no complaints by Taylor about the temperature in his cell; however, she confirmed they had some difficulty regulating the temperature at the jail, and inmates sometimes complained about being cold. Jailers provided complaining inmates with blankets.

She stated the customary practice was to separate co-defendants brought into the jail "for the convenience and safety of jail personnel." She recalled that several days after

Taylor's arrest, medical personnel were called to the jail to attend to him, but she did not recall the reason for the medical treatment. She did not recall any requests by Taylor to use the telephone on the evening of his arrest, nor did she recall instructions that Taylor was not to be allowed to use the telephone, or any complaints from Taylor about the telephones.

F. Dan Albert Fank

Deputy Fank is a Worth County deputy sheriff. He heard about the convenience store robbery on a scanner at his home, and he immediately proceeded to the first Interstate 35 exit immediately north of Hanlontown, which was the only exit between Hanlontown and Highway 105. He heard on the radio that Deputy Boyden had located a vehicle matching the description of the get-away car near the Welcome Center, so Deputy Fank traveled to the scene of the stop.

When Deputy Fank arrived, several other officers already were on the scene. Deputy Boyden approached him and showed him a video cassette that had been found on the scene. (Deputy Fank later learned the videotape had been taken from the surveillance camera at the convenience store during the robbery.) Deputy Boyden stated Taylor had been advised of his *Miranda* rights.

Deputy Boyden asked Deputy Fank to get his K-9 unit and assist in a search of the area. Officers were attempting to locate the gun that had been used in the robbery. Before Deputy Fank could begin searching with his dog, another officer found the gun in an area east of the scene along Highway 105.

Deputy Fank initially had no role in gathering evidence at the scene, but he later obtained a state search warrant for the search of the Blazer. (Gov't Ex. 4) Deputy Fank

executed the search warrant and recovered a number of items of evidence from the vehicle. (*See* Gov. Ex. 4, p. 6)

Deputy Fank also was present when Taylor was brought into the Worth County Sheriff's office. The deputy was called to come to the jail because the officers had some concern that Taylor might be aggressive coming out of the patrol car. The officers who had Taylor in custody awaited Deputy Fank's arrival before taking Taylor from the squad car into the jail. When Deputy Fank arrived at the jail, he took his K-9 out of his car and stood close by while other officers took Taylor from the squad car into the jail. The dog laid down on the ground, never barked, and simply waited for instructions. The closest the dog ever got to Taylor was eight or nine feet.

Deputy Fank observed Taylor's demeanor as he was walking from the squad car into the jail. He stated Taylor was "talkative," and engaged in conversation with the officers. Deputy Fank observed no physical struggle between Taylor and the officers. After Taylor was in the booking room, he made the following unsolicited statement: "I'm going down for life, let's just get this over, I did it." Officers asked him, "What did you do?" but Taylor did not answer, responding that he had not yet been read his rights. At that point, Taylor was read his *Miranda* rights, and he acknowledged that he understood them. No other questions were asked at that time, but Taylor stated, "You get my girlfriend out here and I'll settle this matter right now." Taylor never stated he was unwilling to make a statement, and he never asked for an attorney.

Deputy Fank testified he heard no one make any racial slurs that evening. He also testified he never heard Taylor complain about anything or ask for any medical attention. He did not recall seeing Taylor wearing a shirt at the jail, but he never heard Taylor complain that he was cold.

Several hours later, Taylor was interrogated by an Iowa DCI agent (Special Agent James Wertz). At one point during the interrogation, Taylor asked Deputy Fank for some food, and Deputy Fank asked one of the jailers to get Taylor a sandwich.

G. James Allen Wertz

Special Agent Wertz, the case agent for this matter, is assigned to the Iowa Department of Narcotics Enforcement. He first heard about the robbery and the ensuing chase over the police radio. Later, Worth County requested his assistance in the investigation, and he traveled to the Worth County Sheriff's office, arriving at around 6:30 p.m. on September 17, 2002. He was given some background information about the case, and was advised that Taylor wanted to speak with law enforcement with his girlfriend present. He also was advised that Milwaukee detectives wished to interview Taylor about criminal charges pending in Wisconsin, before Taylor was questioned about the Iowa charges.[12] After waiting until about 10:30 p.m., Agent Wertz checked with Wisconsin officials and learned that the detectives had not yet left Milwaukee. Agent Wertz decided to proceed with his interview of Taylor.

At 11:30 p.m., Agent Wertz met with Taylor in the booking room of the jail. When Taylor was brought into the room, he was wearing an orange jumpsuit and was not handcuffed. Taylor immediately stated his girlfriend, Anna, had nothing to do with what had happened, and he wanted her to be present during the interview. The officers brought Anna into the room. As she entered the room, Taylor told her not to say anything. She was seated next to Taylor.

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[12]Taylor allegedly had obtained the vehicle in which he was riding at the time of his apprehension by taking the vehicle forcibly from its owner in the parking lot of a Wisconsin shopping center. Taylor also was facing sexual assault charges in Milwaukee.

Agent Wertz told Taylor he was going to read him his rights, and Taylor responded he had already been read his rights. Taylor asked what charges were being filed, and Agent Wertz told Taylor he was being charged with first degree robbery and with being a felon in possession of a firearm, and Taylor's girlfriend was being charged with first degree robbery. Taylor responded it was not right to charge his girlfriend with anything because she had nothing to do with the matter. Agent Wertz then read Taylor his *Miranda* rights off of a form (Gov't Ex. 5), and Taylor stated he understood his rights and wished to speak with the officers. Taylor signed the form, and then read the form back to the officers without any difficulty. Taylor then gave the officers a statement about the theft of the vehicle in Milwaukee, the robbery of the Iowa convenience store, and the ensuing chase. The interview lasted 45 minutes to an hour.

According to Agent Wertz, Taylor's demeanor during the interview was normal, except for his irritation about the charges against his girlfriend and his displeasure with the fact that shots had been fired at him during the chase. During the interview, he made statements such as, "I know I'm going away for life." Throughout the interview, Taylor was able to stay on the topic being discussed. He never seemed unable to control himself, and did not raise his voice, disrupt the interview, ask to stop the interview, or ask for a lawyer.

In his rebuttal testimony, Agent Wertz testified he had reviewed the dispatch log and determined that when Taylor was taken to the Worth County Jail, he was left in the police car for about 20-30 minutes before he was taken into the jail. He also testified he did not recall Taylor asking to use the telephone, and he knew of no reason why he would not have agreed to such a request.

H. Sean Lips

Sean Lips is a detective with the Milwaukee, Wisconsin, Police Department. At the time of Taylor's arrest in Iowa, Taylor was a suspect in a sexual assault and robbery case pending in Milwaukee, and although no formal charges had been filed, a temporary felony warrant had been issued for his arrest. Detective Lips was advised of Taylor's arrest in Iowa in the late afternoon of September 17, 2002, so he and his partner, Detective Jeff Point, immediately drove to the Worth County Sheriff's office to interview Taylor. They arrived at the Sheriff's office at about 2:30 a.m. on September 18, 2002. They were advised by Worth County officers that Taylor had been involved in an armed robbery of a gas station, had fled the scene, was taken into custody a short time later, and had admitted to his involvement in the robbery. They also were advised that Taylor had been interviewed earlier that night, and he had been given his *Miranda* warnings.

Taylor was brought into a multi-purpose room in the Sheriff's office for the interview. He was not handcuffed or otherwise restrained in any way. He was asked to sit in a chair, and he complied. His demeanor was "calm and collected." The detectives introduced themselves, and explained that they wanted to interview Taylor concerning sexual assault and robbery charges pending in Milwaukee. Detective Point then gave Taylor the standard *Miranda* warnings, and Taylor agreed to talk with the detectives. Taylor never invoked his right to remain silent and never asked for an attorney.

During the interview, Detective Point completed a four-page statement (Gov't Ex. 6). He began by writing out the first paragraph of page 2 of the statement, which reads as follows:

> Interview began at 4:04 a.m., in the interview room, Worth County Jail, Northwood, Iowa. Elmer Taylor was advised of why he is under arrest, & the charges against him. He was advised of his Miranda Rights, which he stated that he

> understands, & is willing to make a statement. He is not drunk or high, & understands what is going on.

(Gov't Ex. 6, p. 2) Taylor placed his signature at the end of the last sentence in this paragraph. The detectives then completed the first page of the report, which is a form containing background information supplied by Taylor. Taylor indicated he is a high school graduate, he can read and write English, and he was not drunk or high, was not on any medication, and had never been treated for mental health issues. He also acknowledged a criminal history that included armed robbery, possession of controlled substances, auto theft, and battery. (*Id.*, p. 1)

Taylor then gave a detailed statement about events that had occurred in Milwaukee, including a sexual assault and robbery, and the highjacking of a vehicle.[13] Detective Point wrote out Taylor's statement on pages 2, 3, and 4 of Gov't Ex. 6, and he then read the statement to Taylor. Taylor made several corrections and additions to the statement, each of which was initialed by Taylor and Detective Point, and Taylor signed each page of the statement. At the end of the statement, Detective Point wrote, "This statement was read to me, and I agreed to the changes we both initialed, & it is a true statement," and Taylor initialed at the end of the sentence. At the bottom of the last page of the statement, Detective Point indicated the interview was concluded at 7:14 a.m. He noted that during the interview, Taylor had requested and been given coffee, juice, toast, and seven cigarettes, and he had made no other requests.

According to Detective Lips, during the interview Taylor was fully dressed in a jail uniform. He did not complain about anything or ask for any medical treatment during the interview. His only concern was that the detectives speak quietly so his girlfriend, who was in a nearby cell, could not hear what was being discussed.

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[13] When Taylor was arrested in Worth County, he was driving the highjacked vehicle.

I. Priscilla Forsyth

Forsyth is an Assistant Federal Defender. She represented Taylor from the day after his initial appearance on October 30, 2002, until March 12, 2003, when she was permitted by the court to withdraw. She testified that she first talked with Taylor about a possible plea agreement before she received the proposed plea agreement dated November 25, 2002 (Def's Ex. A). During these early discussions, she discussed with Taylor the possible sentence he might receive if convicted. She advised him the Government was proposing to file a notice that could result in a mandatory sentence of life imprisonment, but the Government would agree not to file the notice if he entered into a plea agreement. She also discussed the possibility of resolving the charges in Wisconsin at the same time the Iowa federal charges were resolved. Shortly after receiving the November 25, 2002, proposed plea agreement, she mailed it to Taylor at the Fort Dodge Correctional Facility.

On December 19, 2002, Forsyth traveled to Fort Dodge and met with Taylor. Before their meeting, Forsyth had made several handwritten changes to the factual stipulations in the plea agreement (paragraph 20), based on her interviews with witnesses in the case. At the prison, Forsyth reviewed and discussed the proposed plea agreement with Taylor for about two hours. During this process, she read the important provisions to him, and summarized the provisions that did not appear to apply directly to him.[14] She answered all of his questions, made additional changes to the proposed agreement as a result of their discussions, and made other changes to the agreement that Taylor requested, including further changes to the factual stipulations. The paragraph in the proposed plea agreement waiving the right to appeal (paragraph 25) was stricken.

[14]Forsyth cited the forfeiture paragraphs in the proposed plea agreement as an example of provisions that did not have any direct applicability to Taylor.

Forsyth explained again to Taylor that if he did not sign the proposed plea agreement, the Government intended to file a notice that would, because of his numerous prior felony convictions, mean he would be sentenced to life imprisonment if he were convicted on the pending charges. She also explained to him that the plea agreement provided for a sentence of 35 years in prison,[15] and if the sentencing judge did not agree to sentence him to 35 years, then Taylor would have the option of backing out of the plea agreement and withdrawing his guilty plea. She explained to him that if he were sentenced to 35 years in prison, he could earn good time credit up to 15% of his prison term, but he still would have to serve over 30 years in prison. She also explained that she had not been able to negotiate anything with the Wisconsin authorities.

After Forsyth had completely reviewed the proposed plea agreement with Taylor and had made all the changes she had suggested or Taylor had requested, Taylor initialed each of the paragraphs of the agreement (except paragraph 25), and all of the changes, and he signed the agreement on the last page. Forsyth showed Taylor where to place his initials and where to sign the agreement. She testified she believed Taylor understood the agreement and all of its terms. She then told Taylor she was going to give the agreement to the Assistant U.S. Attorney handling the case, and he expressed no objection to her doing so.

She then sent the agreement to the Government, and the Assistant U.S. Attorney signed the agreement on December 27, 2002. In the meantime, Forsyth made arrangements for Taylor to see Dr. Rogers to develop some mitigation evidence to present to the sentencing judge in the event the judge was reluctant to accept the plea agreement.

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[15]Forsyth testified the 35-year sentence was the result of negotiations and compromise with the Government. Originally, the Government had asked for a longer sentence, and she had suggested a shorter one.

On December 20, 2002, the day after Forsyth had reviewed the proposed plea agreement with Taylor at the Fort Dodge Correctional Facility, Dr. Rogers saw Taylor. On the same day Dr. Rogers met with Taylor, he called Forsyth and told her he had questions about Taylor's competence.[16] On January 3, 2003, Forsyth file a motion to commit Taylor for a competency examination (Doc. No. 15), and the motion was granted the same day (Doc. No. 16). Forsyth moved to withdraw as Taylor's attorney on March 5, 2003 (Doc. No. 21), and the motion was granted on March 12, 2003 (Doc. No. 24).

When asked about waiving Taylor's speedy trial rights, Forsyth responded she told Taylor this was a serious case involving numerous facts and witnesses, and she needed to continue the trial from the original date so she would have adequate time to prepare for trial.

J. David Mrad, Ph.D.

Dr. Mrad is a Board-certified forensic psychologist employed by the Bureau of Prisons at the U.S. Medical Center for Federal Prisoners in Springfield, Missouri. He conducted a mental health evaluation of Taylor from January 23 to February 21, 2003, to determine whether Taylor was able to understand the nature and consequences of the proceedings and to assist in his defense. His evaluation was based on observations of Taylor by staff during Taylor's stay at the Medical Center; a medical history; a physical examination; clinical interviews; a review of court documents; a review of 17 years of medical records from the Wisconsin Department of Corrections; and the following tests:

[16]Forsyth believes she had already sent the signed plea agreement to the Government by the time she talked to Dr. Rogers, but she is not certain.

the Shipley Institute of Living Scale; the Validity Indicator Profile; and the Minnesota Multiphasic Personality Inventory-2.

In his testimony and in his report (Gov't Ex. 12), Dr. Mrad concluded Taylor was able both to understand the nature and consequences of the proceedings and to assist in his defense. According to Dr. Mrad, Taylor is competent to stand trial, and does not appear to be suffering from any mental disorder which would lead him to become incompetent to proceed to trial in the near future. Dr. Mrad testified Taylor is not suffering from any type of mental illness, but he has an antisocial personality disorder. Dr. Mrad further testified the tests he administered established that Taylor was feigning, exaggerating, or malingering to some degree, and he does not, in fact, suffer from a significant mental disorder.

L. Dan Loren Rogers, Ph.D.

Dr. Rogers is a well-qualified clinical psychologist in private practice in Fort Dodge, Iowa. He conducted a psychological evaluation of Taylor after meeting with Taylor on December 20, 2002, and again on July 31, 2003. His evaluation was based on a mental status examination interview of Taylor; a review of Dr. Mrad's report; a review of inmate grievances and discipline reports from 2003; and the following tests: the Wechsler Adult Intelligence Scale-III; the Bender-Gestalt Visual-Motor Test; the Minnesota Multiphasic Personality Inventory-2; and the Rorschach Inkblot Technique (Comprehensive System). He also interviewed Taylor's mother, who told him Taylor was born with a very low birth weight and spent a long time in the hospital. She also told him that until age six, Taylor repeatedly had high fevers causing seizures, requiring hospitalization. Dr. Rogers concluded Taylor likely was suffering from a personality change due to organic brain damage, and possibly schizophrenia. Rogers testified that in

his opinion, Taylor would not have understood the meaning of the *Miranda* warnings he had been given when he was arrested on the current charges, and he would not have been able to make a knowing and intelligent waiver of his rights. He also testified Taylor would not have been able to understand the plea agreement he signed on December 19, 2002 (Def's Ex. A). He further testified Taylor did not have a clear grasp of the charges against him, and would not be able to be able to understand the proceedings or assist his attorney with his defense.

III. FINDINGS OF ACT

The court makes the following findings of fact. A convenience store near Interstate 35 in Hanlontown, Iowa, was robbed at about 4:00 p.m. on September 17, 2002. The store clerk called "911," and described the robber as a tall black male, 45 to 50 years old, wearing glasses, armed with a big gun; and driving a newer-style, tan, two-door Chevrolet Blazer, with out-of-state license plates. According to the clerk, the get-away vehicle headed north on Interstate 35. Worth County, Iowa, Deputy James Boyden was dispatched from the Worth County Sheriff's office to respond to the call. As he was traveling toward Interstate 35, Deputy Boyden heard over the radio that the robber was accompanied by a woman wearing a white T-shirt.

A short time later, Deputy Boyden observed a vehicle generally matching the description of the get-away vehicle coming out of the Iowa Welcome Center near an exit off of Interstate 35, a short distance north of the convenience store. He saw one occupant in the vehicle, a woman in a white T-shirt. She looked at the deputy with what he described as a "deer-in-the-headlights" look, and turned her vehicle onto a local road without using a turn signal. Deputy Boyden decided to stop the vehicle. He followed the vehicle for a short distance, and then activated his red emergency lights. The vehicle

slowed briefly, and then sped up. Deputy Boyden activated his siren, and the woman pulled the vehicle over to the side of the road.

Deputy Boyden ordered the woman out of the vehicle, and she complied. Deputy Boyden then saw a black male (later identified as Taylor) in the back seat of the vehicle. Deputy Boyden drew his gun and ordered Taylor out of the vehicle and onto the ground. Taylor got out of the vehicle, but he refused to get on the ground. Instead, he re-entered the vehicle on the driver's side and got behind the wheel, while the woman got into the vehicle on the passenger's side. Taylor drove away. Deputy Boyden thought he saw Taylor reach under his seat, and fearing Taylor was reaching for a gun, Deputy Boyden fired several shots at the vehicle, striking the left front tire and the driver's-side door. Deputy Boyden re-entered his police car and gave chase. After traveling about two miles, Taylor pulled the vehicle over to the side of the road, got out, and ran into a bean field. Deputy Boyden stopped his car, and ordered Taylor to come out of the field and get on the ground. When another officer arrived on the scene, Taylor complied and was taken into custody.

Taylor was transported by another officer to the Worth County Jail. When he arrived at the jail, he was left in the police car for about 30 minutes, and then was taken into the jail for processing. Jailer Jesse Luther inventoried Taylor's property, and read Taylor his *Miranda* rights. He then took Taylor to a secure room, where Taylor's handcuffs were removed. Luther gave Taylor a jail jumpsuit, which Taylor put on. Luther then asked Taylor to sign a *Miranda* advice-of-rights form and some other paperwork. Taylor refused to sign anything, so Luther wrote "refused to sign" on the paperwork.

At 11:30 p.m., Agent James Wertz met with Taylor in an interview room. Taylor asked that his female companion, "Anna," be brought into the interview room with them.

Wertz arranged for Anna to be brought into the room. Agent Wertz again advised Taylor of his *Miranda* rights. Taylor stated he understood his rights and wished to speak with the officers. He signed an advice-of-rights form, and then read the form back to the officers without difficulty. Taylor then gave a statement admitting his involvement in stealing the vehicle in Wisconsin, robbing the convenience store in Iowa, and the ensuing chase. The interview lasted less than an hour.

Later that night, at about 4:00 a.m. on September 18, 2002, Taylor was interviewed by officers from the Milwaukee Police Department. After again being advised of his *Miranda* rights, Taylor gave a statement admitting his involvement in the sexual assault of an elderly woman in Milwaukee, and in stealing the vehicle involved in the chase from a man in the parking lot of a Wisconsin shopping center.

The court finds there is no credible evidence that Taylor was denied any rights, abused, mistreated, threatened, or coerced in any way by any representative of law enforcement at any point during this entire episode.

At some point on September 17, 2002, after Taylor's arrest, Deputy Fank applied for a search warrant to search the get-away vehicle. The warrant was issued by Magistrate Craig Ensign, and both the Magistrate and Deputy Fank signed the warrant application and related documents on September 17th, prior to the search of the vehicle. Deputy Fank filed a Return to Search Warrant in Worth County on September 19, 2002.

A Complaint was filed in federal court on September 24, 2002, charging Taylor with numerous federal crimes. Taylor was indicted on the current charges on October 25, 2002, and he initially appeared in federal court on October 30, 2002. Assistant Federal Public Defender Priscilla Forsyth was appointed by the federal court to represent Taylor on October 31, 2002.

Forsyth was aware that because of Taylor's extensive prior record, he was facing a possible "three strikes" sentence, with a mandatory sentence of life imprisonment.[17] The prosecutor advised Forsyth that if the parties were not successful in negotiating a plea agreement, he would file a three-strikes notice. After negotiations, Forsyth agreed to present Taylor with a proposed plea agreement that would provided for Taylor to plead guilty and, subject to court approval, receive an agreed sentence[18] of 420 months in prison. Forsyth mailed the proposed plea agreement to Taylor at the Fort Dodge Correctional Facility. Taylor read the proposed agreement, and had more than one telephone conversation with Forsyth about the terms of the agreement.

On December 19, 2002, Forsyth traveled to Fort Dodge and met with Taylor to discuss the proposed agreement. During their discussion, several changes were made in the proposed agreement, including changes to the only substantive area of the proposed agreement about which Taylor expressed concern during the suppression hearing.[19] Taylor then initialed each paragraph of the plea agreement, except for the one paragraph that had been stricken; initialed each change to the plea agreement; and then signed the plea agreement. Forsyth told Taylor she was going to send the executed plea agreement to the prosecutor. The court does not give credence to Taylor's testimony that he did not understand the plea agreement, or that he told Forsyth not to "turn in" the plea agreement.

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[17] *See* 18 U.S.C. § 3559(c).

[18] *See* Fed. R. Crim. P. 11(c)(1)(C).

[19] Taylor testified he was concerned about waiving his right to appeal. Forsyth struck this provision from the proposed agreement before Taylor signed it. The only other concern expressed by Taylor during his testimony at the suppression hearing was about the dates of some of his prior convictions set forth in the proposed plea agreement. The court can discern no substantive significance to this concern, and does not give credence to Taylor's testimony that he expressed any such concern to Forsyth during their discussions about the proposed plea agreement.

The next day, December 20, 2002, Forsyth mailed the executed plea agreement to the prosecutor, and arranged for Dr. Rogers to see Taylor for the purpose of presenting mitigation evidence to the judge at the sentencing hearing in the event the judge balked at the proposed agreed sentence. Dr. Rogers saw Taylor on that same day, and then communicated to Forsyth that he had questions concerning Taylor's competence. On January 3, 2003, Forsyth filed a motion asking the court to order a competency evaluation of Taylor. In the meantime, on December 27, 2002, the prosecutor signed the revised plea agreement and returned it to Forsyth, who received the fully executed agreement on December 30, 2002.

III. LEGAL ANALYSIS

A. The Plea Agreement, and Statements Made During Plea Negotiations

Taylor raises two issues with regard to the plea agreement: (1) whether the plea agreement is admissible at trial, and in particular, whether the factual stipulations in the plea agreement are admissible; and (2) whether any statements made by him during plea negotiations are admissible at trial. The court will address these issues separately.

1. The plea agreement

Taylor argues he did not have the mental capacity to waive the protections of Federal Rule of Evidence 410 when he entered into the plea agreement.[20] After a careful review of the plea agreement, the court can find no language in the agreement that would operate as a waiver of Taylor's rights under Rule 410. Thus, as discussed in the next section of this opinion, the court believes the rule continues to govern the admissibility of any statements made by Taylor during plea discussions.

It appears Taylor actually is arguing he was not competent to enter into the plea agreement or to understand that the factual stipulations in the plea agreement could be used against him in court,[21] and therefore, that the factual stipulations in the plea agreement are inadmissible. Factual stipulations in connection with a plea agreement ordinarily are admissible at trial, even when the defendant does not follow through and plead guilty

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[20] In his brief (Doc. No. 89, p. 2), Taylor cites to Federal Rule of Evidence 401, which defines "relevant evidence," and Federal Rule of Criminal Procedure 11(e)(6), which was withdrawn as part of the 2002 amendments to the Rules because it duplicated Federal Rule of Evidence 410. *See* Fed. R. Crim. P. 11(f). The court assumes Taylor intended to cite Federal Rule of Evidence 410, which provides as follows:

> [E]vidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
>
> * * *
>
> (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

[21] The plea agreement provides that if Taylor violates any term or condition of the plea agreement "in **any** respect" the Government may use against him at trial "any stipulations in this agreement." (Def's Ex. A, ¶ 17) One of Taylor's obligations under the plea agreement was to plead guilty to the armed career criminal charge in Count 3 of the Indictment. (Id., ¶ 1)

pursuant to the plea agreement. *United States v. Young*, 223 F.3d 905, 911 (8th Cir. 2000).[22]

By entering into a plea agreement, a defendant surrenders a number of constitutional rights in exchange for certain promises by the prosecutor. A defendant can give up those rights only by making a voluntary and knowing decision to do so. *Mabry v. Johnson*, 467 U.S. 504, 508, 104 S. Ct. 2543, 2547, 81 L. Ed. 2d 437 (1984) ("plea agreements are consistent with the requirements of voluntariness and intelligence -- because each side may obtain advantages when a guilty plea is exchanged for sentencing concessions, the agreement is no less voluntary than any other bargained-for exchange.") The court must, therefore, determine whether Taylor's waiver of rights and his stipulation of facts, as set forth in the plea agreement, were voluntary and knowing. *Id.; Young*.

Preliminarily, the court finds unpersuasive any claim by Taylor that his waiver of rights was not voluntary due to the Government's threat to file a three-strikes notice if he failed to enter into the agreement. In negotiating a plea agreement, a prosecutor may use the threat of increased charges. *Bordenkircher v. Hayes*, 434 U.S. 357, 98 S. Ct. 663, 54

[22]In *Young*, the court addressed the admissibility of an affidavit that was given in connection with a plea agreement, while in the present case, the court is concerned with a factual stipulation contained within the plea agreement itself. The trial court in *Young* held, "[T]he Affidavit at issue here is unquestionably a statement made in the course of plea discussions"; the defendant did not voluntarily waive his right to exclude such statements; and the affidavit was not admissible at trial. *U.S. v. Young*, 73 F. Supp. 2d 1014, 1019-25 (N.D. Iowa 1999) (Bennett, C.J.) In addressing this issue, the appellate court held that although the trial court did not err in its conclusion that "the affidavit was a statement made in the course of plea negotiations and thus subject to the plea-statement rules," nevertheless, absent affirmative evidence to the contrary, the plea agreement effected a knowing and voluntary waiver of the defendant's rights under the plea-statement rules, and the affidavit was admissible at trial. *Young*, 223 F.3d at 909-11 (citing *, e.g., United States v. Mezzanatto*, 513 U.S. 196, 210, 115 S. Ct. 797, 806, 130 L. Ed. 2d 697 (1995)).

L. Ed. 2d 604 (1978).[23] Further, Taylor has offered no evidence of coercive police conduct that led to his decision to enter into the plea agreement. *See Colorado v. Connelly*, 479 U.S. 157, 168-70, 107 S. Ct. 515, 522-524, 93 L. Ed. 2d 157 (1986) (police coercion required to make waiver of right involuntary); *United States v. Turner*, 157 F.3d 552, 555 (8th Cir. 1998). Taylor's primary claim, however, is that he did not knowingly or intelligently enter into the plea agreement because he suffers from a mental condition that prevented him from understanding the consequences of entering into the plea agreement. This argument survives *Colorado v. Connelly*. *See Turner*, *id.* (addressing, but rejecting, defendant's argument that his waiver was not knowing or intelligent because of his low I.Q.).

Taylor further claims his waiver of rights was not competent and intelligent because his attorney did not properly explain to him the terms of the plea agreement or the rights he was giving up by entering into the plea agreement. In such a situation, the court must satisfy itself that the defendant waived his rights competently and intelligently. *Godinez v. Moran*, 509 U.S. 389, 400-402, 113 S. Ct. 2680, 2687-88, 125 L. Ed. 2d 321 (1993); *Faretta v. California*, 422 U.S. 806, 835, 113 S. Ct. 2525, 2541, 45 L. Ed. 2d 562 (1975) (the record must establish the defendant "knows what he is doing and his choice is made with his eyes open.")

In the present case, the evidence overwhelmingly supports a conclusion that Taylor entered into the plea agreement knowingly and intelligently, unencumbered by a mental

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[23]In *Bordenkircher*, the defendant faced an indictment under a forgery statute. During plea negotiations, the prosecutor expressly indicated that if the defendant did not plead guilty to the forgery charge, the Government also would charge him under a habitual offender statute. The defendant refused to plead guilty, the additional indictment was brought, and he was convicted of both charges. The Supreme Court noted this process merely presented the defendant "with the unpleasant alternatives of foregoing trial or facing charges on which he was plainly subject to prosecution. . . ." *Id.*, 434 U.S. at 365, 98 S. Ct. at 669. In such a situation, due process is satisfied as long as the defendant is free to accept or reject the prosecutor's offer. *Id.*

defect or any failure of his counsel to explain the agreement fully. The standard for competence is whether a defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and has "a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 789, 4 L. Ed. 2d 824 (1960). From the testimony of Dr. Mrad, Dr. Rogers, and Ms. Forsyth, and, significantly, from the testimony of Taylor himself,[24] the court finds that when Taylor initialed and signed the plea agreement, he was able to consult with his lawyer, understand her counsel and advice, and, ultimately, understand the terms and effects of the plea agreement. In particular, the court finds Taylor was, for the most part, able to read and understand the terms of the plea agreement, and that he did so. When he signed the agreement, he knew he was stipulating to certain facts relating to the charges against him, and he knew the stipulation could be used against him if he later decided to back out of the plea agreement.

The court further finds Forsyth properly and fully explained the plea agreement to Taylor, and correctly advised him of the terms of the plea agreement and the rights he was giving up by entering into the plea agreement.

2. Statements made during plea negotiations

There is no evidence that Taylor made any statements to the Government during plea negotiations. Such statements generally are inadmissible. *See* Fed. R. Evid. 410;

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[24]During his testimony, Taylor demonstrated that he could understand and participate in a detailed discussion of the facts and issues in his case. He had a detailed understanding of what the plea agreement was, and of the issues presented by his entering into the plea agreement. When he acted as if he did not understand what was in the plea agreement or what certain words meant, the court found him not to be credible. As an example, during his testimony, Taylor correctly used the word "cavalier," and then when he realized what he had said, immediately stated he did not know what the word meant, and he sometimes uses words without knowing their meanings.

Young, 223 F.3d at 908-09. To the extent Taylor made any such statements, the motion to suppress should be granted.

However, the same analysis does not extend to Taylor's statements to his attorney while reviewing and executing the plea agreement. Such statements are admissible to the extent they are relevant to any challenge made by Taylor at trial to the knowing and voluntary nature of his agreement to enter into the stipulation of facts set out in the plea agreement, as discussed above.

B. Probable Cause to Stop the Defendant's Vehicle

Taylor argues Deputy Boyden lacked probable cause to stop the get-away vehicle. Taylor relies on *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), in arguing the deputy lacked any reasonable, articulable suspicion that the vehicle's driver (Anna) was engaged in criminal activity. (*See* Doc. No. 89) Taylor's reliance on a *Terry* analysis is erroneous under these facts. Deputy Boyden testified he saw the vehicle's driver turn without using a turn signal. Courts repeatedly have held that officers may stop a vehicle for any traffic violation, however minor. *See, e.g., United States. v. Perez*, 200 F.3d 576 (8th Cir. 2000) (following too close); *United States v. Beatty*, 170 F.3d 811 (8th Cir. 1999) (no working light illuminating license plate); *United States v. Lyton*, 161 F.3d 1168 (8th Cir. 1998) (following too close). Thus, Deputy Boyden lawfully stopped the vehicle after the illegal turn. The deputy's other suspicions regarding the vehicle and its driver were irrelevant to his right to stop the vehicle for the traffic violation.

Furthermore, the court finds Deputy Boyden had a reasonable, articulable suspicion that the vehicle he stopped was, in fact, the vehicle that had been involved in the robbery of the convenience store, and therefore, he had the right under *Terry* to stop the vehicle. The vehicle matched the description of the vehicle that had been involved in the robbery

(including the fact that the vehicle had out-of-state plates), the driver of the vehicle matched the description of one of the occupants of the vehicle from the robbery, the vehicle was in a location where the deputy reasonably expected to find the get-away vehicle, and the occupant of the vehicle looked at the deputy with a "dear in the headlights" look, and then turned down a local road traveling away from the Interstate. This information was more than sufficient to satisfy the *Terry* standard.

C. Search of the Defendant's Vehicle

Taylor seeks to suppress all evidence flowing from the search of the get-away vehicle. He alleges the search warrant application, affidavit, and endorsement were not signed until after the Government had produced those documents in the first part of the hearing on Taylor's motion to suppress. The documents are dated September 17, 2002; both Deputy Fank and Magistrate Ensign have confirmed they signed the documents on that date (*see* Doc. No. 91, attachment); and the court has found the warrant was properly signed and issued on September 17, 2002. Taylor's motion to suppress should be denied on this issue.

D. Defendant's Statements on Evening of Arrest

Taylor seeks to suppress all statements he made to law enforcement on the evening of his arrest, arguing he lacked "the mental ability to fully understand the application of his rights." (Doc. No. 89) He claims his statements were not voluntary because he was coerced and mistreated by the officers, and he was led to believe if he cooperated, Anna would be released. (*Id.*) The court finds Taylor's arguments unpersuasive. As noted previously, the evidence indicates Taylor was not mistreated or coerced in any manner, and his statements were made with full knowledge of his rights. The only evidence to

support Taylor's assertions is his own testimony, which the court finds not to be credible. Taylor's motion to suppress his statements should be denied.

V. CONCLUSION

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections[25] to the Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this report and recommendation, that Taylor's motion to suppress be granted as to any statements he may have made to the Government's representatives during plea negotiations, and his motion be denied on all other grounds.

DATED this 22nd day of October, 2003.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

[25]Objections must specify the parts of the report and recommendation to which objections are made. Objections also must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).